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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

IN THE MATTER OF ANONYMOUS - PETITIONER

v.

CHIEF JUSTICE WILENTZ, JUSTICES CLIFFORD, HANDLER, POLLOCK, O'HERN, GARIBALDI, STEIN individually and in their official capacity as Judges of the Supreme Court of the State of New Jersey (herein-after the "New Jersey Defendants"); the New Jersey Rules for Admission to the Bar; CHIEF JUDGE JUDITH S. KAYE, and ASSOCIATE JUDGES JOSEPH BELLACOSA, CARMEN BEAUCHAMP CIPARICK, HOWARD A. LEVINE, RICHARD D. SIMONS, GEORGE BUNDI SMITH, and VITO J. TITONE individually and in their official capacity as Judges of the Court of Appeals of the State of New York; (herein-after the "New York Defendants"); the New York Rules for Admission to the Bar; SETON HALL UNIVERSITY, A Corporation of the State of New Jersey; SETON HALL UNIVERSITY SCHOOL OF LAW, A Corporation of the State of New Jersey, THE BOARD OF REGENTS OF SETON HALL UNIVERSITY (J. Doe 1 - 27); THE TRUSTEES OF SETON HALL UNIVERSITY (J. Does 28 -31); THE TRUSTEES OF SETON HALL UNIVERSITY SCHOOL OF LAW (J. Does 32 - 45), Dean RONALD J. RICCIO, Professor CAROL R. GOFORTH, Professor D MICHAEL RISINGER, individually and in their official capacities; (herein-after the "SHU Defendants); The AMERICAN BAR ASSOCIATION - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Petitioner, POB 315, Liberty Corner, N.J. 07938

H5 PP

QUESTIONS PRESENTED

When a default is an equivalent of an injunction staying a related state court proceeding, whether an Order vacating the a default is immediately appealable under 28 U.S.C. §1292 and Carson v. American Brands, Inc., 101 S.Ct. 993, 450 U.S. 79, 67 L.Ed.2d 59 (1981) as the equivalent of dissolving and refusing an injunction staying a New Jersey proceedings?

Whether an appeal of an Order vacating a default the effect of which is refusing and dissolving and injunction is an event of jurisdictional significance under Griggs v. Provident Consumer Discount Co. 459 U.S. 56, 103 S.Ct. 400, 74 L.Ed.2d 225 (1982) (*per curiam*) that confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal including a subsequent dismissal of the complaint on preclusion principles that the default nullified?

Whether an appeal of an Order vacating a default which is followed by an Order dismissing the complaint may be regard as an appeal under 28 U.S.C. § 1291 from a final order regardless of whether the district court had jurisdiction upon appeal of the vacatur to dismiss the complaint when the sole purpose of the vacatur was to surrender jurisdiction of a federal suit to a state court under the Collateral Order doctrine. Moses H. Cone Memorial Hosp. v. Mercury Const. 460 U.S., 103 S.Ct. 927, 74 L.Ed.2d 765 (1983)?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

OPINIONS BELOW 1

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 4

REASONS FOR GRANTING THE WRIT 12

CONCLUSION 22

INDEX TO APPENDICES

APPENDIX A

Order of Third Circuit Dismissing Appeal of 96-5403, dated May 5, 1997.

APPENDIX B

Order denying Temporary Restraining Order of related state proceeding, dated March 11, 1996

APPENDIX C

Portion of request for Order to Show Cause to stay state court proceeding that Judge Thompson never denied or granted, dated March 19, 1996.

APPENDIX D

Default entered against defendants on April 17, 1996.

APPENDIX E

Portion of Order vacating default dated June 12, 1996

APPENDIX F

Appeal of vacatur of default filed June 25, 1996.

APPENDIX G

Notice of Appeal filed March 7, 1997 (portion).

APPENDIX H

Amended Notice of Appeal filed May 16, 1997.

APPENDIX G

Court Order staying the scheduling in 96-5403 and 97-5129 pending the jurisdictional issue in 97-5129.

APPENDIX H

Petition for Rehearing of dismissal of appeal 96-5403.

TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

American Trade Partners v. A-1 Int'l Importing Enter Inc., 755 F.Supp. 1292, 1302 (E.D.Pa. 1990) 21

Anderson v. University of Wisconsin, 665 F.Supp. 1372, 1396 (W.D.Wis. 1987) *aff'd* 841 F.2d 737 (7th Cir. 1988) 15

Application of Matthews, 94 N.J. 59 (1983) 20

Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191 (1965) 15

Baccus v. Karger, 692 F.Supp. 290, 295 (S.D.N.Y. 1988) 16

Bell v. Burson, 402 U.S. 535, 542, 91 S.Ct. 1586, 1591 (1971)...15

Bennun v. Rutgers State Univ. 941 F.2d 154, 167 (CA 3 1991).. 18

Bernardsville Quarry v. Borough of Bernardsville, 929 F.2d 927, 930 (CA3 1991) 18

Board of Curators of the University of Missouri v. Horowitz, 435 U.S. 78, 84, 98 S.Ct. 948, 952 (1978) 16

Boddie v. Connecticut, 401 U.S. 371, 379, 91 S.Ct. 780, 786 (1971) 15

Brandenburg v. Brandenburg, 83 N.J. 198 (1980) 20

Brown v. Brown 208 N.J. Super. 372, 384 (A.D. 1986) . . . 18, 19

Burnett v. New York Central R.R. Co., 380 U.S. 424, 430, 85 S.Ct. 1050, 1055 (1965) 22

Burrell v. Quaranta, 259 N.J. Super. 243 (A.D. 1992) . 16, 17, 20

Cafferata v. Peyser, 251 N.J. Super. 256 (1991) 18

Carson v. American Brands, Inc., 101 S.Ct. 993, 450 U.S. 79, 67 L.Ed.2d 59 (1981) 12

Cleveland Bd. Of Education v. Loudermill, 470 U.S. 532, 105 S.Ct. 1487 (1985) 15

Collins v. City of Harker Heights, Tex. 112 S.Ct. 1061, 1066 (1992) 17

Commonwealth Land Title Ins. Co. v. United States, 759 F.Supp. 87, 90 (D.Conn. 1991) 21

Davidson v. Capuano, 792 F.2d 275, 278 (CA2 1986) 17

DeCamp v. Miller, 44 N.J.L. 617 (1882) 20

District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) 2, 13

Ditrolio v. Antiles, 142 N.J. 253, 275 (1995) 18

Eubank v. Richmond, 226 U.S. 137, 33 S.Ct. 76 (1914) 15

Freeman v. Bee Machine Co., 319 U.S. 448 (1943) 13

Goldberg v. Kelly, 397 U.S. 254, 267-68, 90 S.Ct. 1011, 1020 (1970) 15

Goldvaur Inc. v. Herman 369 U.S. 463, 467 82 S.Ct. 913, 916 (1962) 22

Greene v. McElroy, 360 U.S. 474, 79 S. Ct. 1400 (1959) 16

Greenhill v. Bailey, 519 F.2d 5 (8 Cir. 1975) 16

Griggs v. Provident Consumer Discount Co. 459 U.S. 56, 103 S.Ct. 400, 74 L.Ed.2d 225 (1982) (*per curiam*) 12

Highland Farms Dairy v. Agnew, 300 U.S. 608, 614, 557 S.Ct. 49, 552 (1937) 15

Hodgkin v. Applegate, 31 N.J. 29, 43 (1959) 20

In Re Griffiths, 413 U.S. 717, 93 S.Ct. 2851 (1973) 16

Lombardi v. Tauro, 470 F.2d 798 (5th Cir. 1972) *cert denied* 412 U.S. 919 15

Martin v. Helstad, 578 F.Supp. 1473, 1480 (W.D.Wis 1983) .. 16

McCusker v. Commonwealth Cas. Co., 106 N.J. 116 (1930) .. 20

McFadden v. Turner, 159 N.J. Super. 360 (A.D. 1978) 20

Merrow v. Goldberg, 672 F.Supp. 766 (D.C.V.T. 1987) 16

Monell v. NYC Dept. of Soc. Servs., 436 U.S. 658 (1978) ... 17

Montana v. U.S., 99 S.Ct. 970, 973 (1979) 19

Mortgageling Corp. v. Commonwealth Land Title, 142 N.J. 336, 348 (1995) 20

Moses H. Cone Memorial Hosp. v. Mercury Const. 460 U.S., 103 S.Ct. 927, 74 L.Ed.2d 765 (1983) 13

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313, 70 S.Ct. 652, 656 (1950) 15

Nanavate v. Burdette Tomlin Memorial Hosp., 857 F.2d 96 (CA 3 1988) 18

NJ St Bar Ass'n v. NJ Ass'n of Realtor Bds., 93 N.J. 470 (1983) 20

Omni Capital Int'l v. Rudolf Wolff & Co., 484 U.S. 97 (1987) . 15

Polar Ice Cream & Creamery v. Andrews, 375 U.S. 361, 377, 84 S.Ct. 378, 387 (1964) 15

Robinson v. Overseas Military Sales Corp., 21 F.2d. 502, 507 n.4. (CA 2 1994) 21

Schware v. Board of Bar Examiners of the State of New Mexico, 353 U.S. 232, 77 S. Ct. 752 (1957) 15, 16

State v. Standard Tank, 284 N.J. Super. 381, 395 (A.D. 1995) . 19

Stegneier v. St. Elizabeth Hosp. 239 N.J. Super. 475, 486 (A. D. 1990) 20

Thornton v. Potamkin Chevrolet, 94 N.J. 1 (1983). 18

United States of America v. American Bar Association, 95 Civ. 1211 (CRR) (D.C.D.C. 1995) 14

Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 591 A.2d 592 (1991) 17, 19

Woodward-Clyde, 105 N.J. at 473 (citation omitted) 19

STATUTES AND RULES

15 U.S.C. § 1 ..... 2, 4, 14
15 U.S.C. § 2 ..... 2, 4
15 U.S.C. § 4 13
15 U.S.C. § 15 ..... 2, 4
15 U.S.C. § 22 21
15 U.S.C. § 26 2
20 U.S.C. § 1232 Family Ed. Rights and Privacy Act of 1974 ... 9
28 U.S.C. § 1651(a) "All Writs Act" 9, 12, 17
28 U.S.C. § 1254(1) 2
28 U.S.C. § 1291 ..... 2, 4, 13
28 U.S.C. § 1292 ..... 2, 4, 12
28 U.S.C. § 1331 2
28 U.S.C. § 1406(a) 22
28 U.S.C. § 2283 18
42 U.S.C. § 1983 ..... 2, 4
42 U.S.C. § 1985(3) 2, 4
Supreme Court Rule 10 ..... 2, 12
Supreme Court Rule 11 ..... 2, 12

OTHER

F.R.C.P. Rule 60(b) 8
New Jersey Const. Art. VI, §II, ¶ 3; 20
New Jersey Court Rule 2:2-1(a)(4) 20
New Jersey Court Rule 4:5-4 21
New Jersey Court Rule 4:30A 18

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The Order appealed from the United States court of appeals for the Third Circuit appears at Appendix A to the petition and does not appear to be designated for publication. (The Second Circuit Court of Appeals mandated that a related case not be published.)

JURISDICTION

Jurisdiction in this Court is proper under 28 U.S.C. § 1254(1) in that this is an Appeal from the Third Circuit Court of Appeals "Final Order" dated May 5, 1997. The Third Circuit had Subject Matter Jurisdiction as the District Court had original Jurisdiction on the existence of a Federal question and by reason of 28 U.S.C. § 1331, and 15 U.S.C. §§ 4, 15, 26. This action arose under 15 U.S.C. §§ 1, 2, 15; 42 U.S.C. §§ 1983, 1985(3); the U.S. Constitution, Article IV, §2, and the Due Process and Equal Protection Clauses of the Fourteenth Amendment; and included pendent state claims. The District Court had exclusive jurisdiction over constitutional challenges to the New Jersey and New York state's rules and regulations concerning issues related to admission to the Bar. District of Columbia Court of Appeals v. Feldman 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). This included issues related to the delegation of power raised in the instant complaint. (Citation omitted.) The Third Circuit had Appellate Jurisdiction under 28 U.S.C. §§ 1291, 1292.

Alternatively Jurisdiction in this Court is proper as a petition for a writ of certiorari to review a case pending in the Third Circuit Court of Appeals before the rehearing judgment is entered as shown *infra*, the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court. Rule 11.

A petition for rehearing was filed in the Third Circuit. It was mail certified mail three days before the due date. The Clerk's office of the Third Circuit indicated it was received one-day after the due date and have asked for a petition to file the petition for rehearing within time. The due date of the motion for leave to file the petition for rehearing within time is due June 6, 1997.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title 28 United States Code §1291 Final Decisions of district courts
The court of appeals (other than the United States Court of Appeals of the Federal Circuit) shall have jurisdiction of appeals from all final decision of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292 (c) and (d) and 1295 of this title.

Title 28 United States Code §1292 Interlocutory decisions
(a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:
(1) Interlocutory orders of the district courts of the United States, ... or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunction, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court. ...
(b) When a district judge, in making a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order. ...
(e) The Supreme Court may prescribe rules, in accordance with section 2072 of this title, to provide for an appeal of an interlocutory decision to the courts of appeals that is not otherwise provided for under section (a), (b), (c), or (d).

STATEMENT OF THE CASE

This is an appeal of an Order dated May 5, 1997, dismissing an appeal for "want of jurisdiction" (A) The issue before the Third Circuit related to whether a Federal District Court order vacating a default was appealable under 28 U.S.C. §§ 1291, 1292 when the default was the equivalent of a stay of a state court proceeding and the vacatur had the effect of denying injunctive relief.

On January 29, 1996, Petitioner Anonymous brought this action in District Court, Trenton, New Jersey challenging, *inter alia*, the New Jersey and New York Rules for Admission to the Bar as unconstitutional and violative of Antitrust laws. An unconstitutional delegation of power to the ABA and Seton Hall Law School injured the plaintiff's business and property. Defendants denied Plaintiff's rights secured for example, under: the United States Constitution, Article IV, the Fifth and Fourteenth Amendments; 42 U.S.C. §§ 1983, 1985(3), 15 U.S.C. §§ 1, 2, 15; and the common law. Plaintiff also sought injunctive relief to include: A Stay of a related State Court proceeding; Access to a Judicial Investigation of fraud between the Motion Judge in that state case and the former New Jersey Attorney General representing the New Jersey Judges in a related New York Southern District case; an Order Compelling the issuance of plaintiff's Diploma with the Correct Graduation date; and an Injunction prohibiting further publication of false and defamatory "information".

On January 29, 1996, plaintiff filed a Motion for a Temporary Injunction - Writ of Mandamus to stay a related New Jersey Court proceeding. Between February 12 and 13, the NJ, NY and ABA defendants received via certified mail a Summons, Notice and Acknowledgment of Receipt of Summons and Complaint. Defendants did not respond. On March 7, without cause, Judge Thompson denied the Motion for an injunction (B). Between March 19 and 25, the NJ, NY and ABA defendants were served by sheriffs. The NJ, NY and ABA defendants failed to respond. On March 19, plaintiff filed a Motion for an Order to Show Cause staying the inferior related state action; and why plaintiff should not

be permitted access to records of an investigation (ACJC 95-199) into the conduct of the New Jersey Superior Court Judge in the related New Jersey state proceeding. Judge Thompson never acted upon the request.

A default was entered on April 17, 1996, against Chief Justice Wilentz, NJ Justices Clifford, Handler, Pollock, O'Hern, Garibaldi and Stein, NY Judges Kaye, Bellacosa, Ciparick, Simons, Smith, Titone, and Levine, and the American Bar Association ("NJ", "NY" and ABA defendants.) On June 12, the Default was vacated without cause (e.g., E). On June 24, plaintiff filed an appeal from the order vacating the Defaults (F). No. 96-5403. On July 19, the Record was transmitted to the Court of Appeals. On July 5, Judge Thompson was requested to certify the vacatur for appeal. She denied the request.

On July 22, 1996, Judge Thompson granted the Seton Hall defendants' motion to dismiss and denied plaintiff's July 8, 1996 Cross-Motion to Compel the correct dating of plaintiff's diploma and correctly certify plaintiff's graduation as January 1994, and not August 1994, and for an injunction prohibiting publication of defamatory information. She lacked jurisdiction to grant the motion to dismiss but did have jurisdiction to grant plaintiff's motions. Accordingly, on July 31, plaintiff filed a Rule 60 motion for Relief from the Order granting the Seton Hall defendants' motion to dismiss.

On September, 11, 1996, Judge Thompson dismissed without prejudice the Complaint against the NJ, NY and ABA defendants. On October 8, plaintiff requested leave to extend the time to appeal the dismissal. On Sunday, November 3, the day before the return date of November 4, the District Court denied a Motion for an Extension of Time to Appeal the dismissal of the Complaint. By doing so, Her Honor overlooked information filed with the court on the return date (with a request for leave to endorse the pleading as filed within time. Plaintiff waited to hear from the NY or NJ defendants for consent. Moreover, plaintiff originally sought

adjournment of and consent to adjourn the original Motions for Dismissal.) On November 15, plaintiff filed a motion for reconsideration of the Order denying Motion for Leave to Extend the Time to Appeal. There was good cause for extending the time. On December 30, the Court declined to reconsider the Sunday, November 3, denial.

On January 2, 1997, the Office of Staff Attorneys for the United States Court of Appeals, wrote "it would not be appropriate to submit this appeal [in No. 96-5403] to the Court for possible jurisdictional dismissal as you were originally advised by our letter of July 3, 1996." *(Copy omitted.)*. On January 13, plaintiff-appellant's Motioned the Third Circuit to for Supplement leave to, *inter alia*, Extend the Time to Appeal the District Court's dismissal of the Complaint, appeal the District Court's refusal to issue the Order to Show Cause for access to a judicial investigation, the denial of an Order Compelling a correct Diploma and Graduation; and issue an injunction prohibiting the publication of false and defamatory information. After the Court of Appeals and the District Court declined to permit an extension of the time for filing an appeal of the complaint pending the outcome of Docket 96-5403, a Notice of Appeal was subsequently filed on March 7 (e.g., F) Docket 97-5129. An Amended Notice of Appeal was filed on May 16, to include an appeal of the District Court's refusal to "file the .appeal within time" (G) Docket 97-5318.

On May 5, 1997, a substitute panel of Circuit Judges granted a motion to dismiss for want of jurisdiction (A). The May 5 Order contradicts an April 16 Order of the Court that was not vacated. That previous Court Order stated: a "Motion by Appellant to Stay Appeal in 97-5129 which shall be construed as a Motion to Stay the Briefing in 96-5403 pending the jurisdictional issue in 97-5129. The briefing schedule is stayed pending the jurisdictional issue in 97-5129. In the event the appeal is dismissed for lack of jurisdiction or the jurisdictional question is referred to the merits panel appellant reply brief shall be filed and served within 10 days from the date of the order stating such." (I). (The Motion to

Dismiss the Appeal was filed about March 25, 1997, nearly one year later than the Appeal was filed on June 26, 1996).

The May 5, 1997 Order conflicts with the Third Circuit's Order on December 2, 1996 and the Court's Order of April 16, 1997. In effect, a substitute Panel of the Court dismissed an appeal that was stayed by a separate Order of the Court and that was reopened by an original Panel of the Court. To dismiss 96-5403 without first addressing the jurisdictional issue in 97-5129 violates due process as it deprived the plaintiff of the opportunity to file a reply as stated in the Court's Order of April 16, 1997. Because of the conflict within the circuit, the matter should be reheard in banc and by the original panel.

A Petition for Rehearing was mailed certified mail Z 314 512 044 on May 16, 1997 (copy attached) and the Clerk's office indicated it was received by them on May 20, 1997 and not May 19, 1997. At the request of the Clerk's office of the Court of Appeal, plaintiff-appellant Petitioned the Court of Appeals for the Third Circuit for Leave to file the Petition for Rehearing within time.

Petitioner's Constitutional injury ripened after on December 22, 1993 plaintiff applied to take the February 1994 New York Bar exam. Plaintiff completed the Graduation and residency requirements from Seton Hall Law School in January 1994. However, Seton Hall arbitrarily refused to certify documents of the plaintiff's graduation to take the February and July 1994 NY Bar Exams. The documents were necessary for completion of applicant's file. The State of New York, Court of Appeals, denied plaintiff's petition for a waiver of the requirements for SHU to certify the documents. The Board stated the rules for admission to the bar did not allow a grant of a waiver of these documents. Plaintiff would have and should have been admitted into the NY bar exam to qualify for the practice of law but for defendants' activities.

On April 20, 1994, as plaintiff's Constitutional injury ripened and after exhausting administrative remedies, suit was filed against the

NJ and NY defendants in the New York Southern District. On April 21, Judge Keenan issued an Order to Show Cause why plaintiff should not be allowed to take the July 1994 New York Bar exam and for Protective and Sealing Orders. On May 2, Judge Keenan ordered a briefing schedule and ordered all parties to agree to terms of Protective and Sealing Order. Both Counsel for both NJ and NY defendants were in attendance and consented and agreed to an Anonymous Caption. On July 11, plaintiff requested Judge Keenan waive the requirement to request excused joinder in the state court action and Order the joinder of the SHU defendants. On July 25, the Southern District denied plaintiff' motion for a preliminary injunction allowing plaintiff to take the July 1994 New York Bar exam but said the plaintiff would be entitled to monetary damages. On August 1, a First Amended Complaint was filed to add SHU defendants. About October 14, SHU filed an Answer and omitted the defense of the Entire Controversy Doctrine, thereby waving the defense. On November 7, plaintiff filed a cross-motion to Compel the certification of plaintiff's graduation and diploma. On December 15, 1994 SHU certified plaintiff graduation but issued the diploma with the wrong graduation date of August 1994 and not January 1994. On December 6, Judge Keenan stayed all Discovery. On December 27, Judge Keenan denied a cross-motion to file a Second Amended Complaint adding ABA defendants. On October 15, 1995, over eighteen months after the filing of the original Complaint, the Southern District dismissed the Complaint without prejudice. On December 12, Judge Keenan granted leave to file a motion for the extension of time by January 2, 1996. On January 27, plaintiff informed the Southern District Judge that pending in the New Jersey District Court was a constitutional challenge to the New Jersey Rules for Admission to the Bar and included a copy of the Complaint. On February 29, while pending, plaintiff filed a Notice of Motion for an Order to Show Cause why plaintiff should not be permitted access to record of an investigation of a complaint ACJC 95-199 filed with the Supreme Court of New Jersey Advisory Committee on Judicial Conduct. The Southern District declined to issue the show cause order. (Plaintiff requested under the "All Writs Act" for a Stay of New Jersey Court proceedings on two

occasions: January 26, 1995 and renewed on June 30, 1995.) On February 28, 1996 the Southern District denied Jurisdictional Discovery. On March 18, Judge Keenan Denied plaintiff's March 14 F.R.C.P. Rule 60(b) Motion for Relief from Judgment or Order. (An appeal of the Second Circuit will be filed in June 1997.)

The case Judge Thompson relied on for preclusion relates to a case filed on August 31, 1993, before plaintiff's Constitutional injury ripened and before exhausting administrative remedies. Plaintiff sued a former associate dean at Seton Hall Law School in New Jersey Superior Court. Consistent with New Jersey Court Rule 4:5-1, plaintiff stated in the complaint: "This is not a certification of no other actions against other parties. It is expected that upon completion of discovery, additional parties may need to be joined." On September 24, the Motion Judge in that case denied an anonymous caption unless the plaintiff agreed to withdraw the Complaint. On October 20, after opposing counsel deceived an Appellate Judge, the Appellate Division denied an appeal for an Anonymous Caption. A Third Appellate Judge recused himself from the case because of a conflict of interest. On November 10, the New Jersey Supreme Court denied an Appeal for an Anonymous Caption. An appeal of that Order was denied by the United States Supreme Court. Ironically the NJ defendants denied plaintiff's request for an anonymous caption as permitted by State Rule but consented to it in the New Jersey and Southern District Courts.

On March 4, 1994, plaintiff filed for excused joinder in the New Jersey Superior Court. On March 10, Judge Dupuis vacated its Order denying an extension of the discovery period and granted a 90-day extension. Shortly thereafter, well before the Order 90 day discovery period, defendant in that case filed for Summary Judgment. On March 8, Judge Dupuis denied Protective Orders for documents that were protected by the Family Educational Rights and Privacy Act of 1974 20 U.S.C. 1232. The defendant later admitted he deceived the court and falsified the record by tampering the documents he submitted to the Court. An Appellate Division denied leave to appeal the protective orders on May 4. However,

one of the three Appellate Judge, Judge Keefe, was re-appointed to the Appeal and participated in the denial of the leave to appeal. On April 15, plaintiff Motioned for an Amended Complaint, production of Documents and Answers to Interrogatories, and to Extend the Discovery period. This was based on the state court defendant's lies about plaintiff's graduation without incident in January 1994. As the constitutional claims ripened, in addition to asking for excused joinder, plaintiff sought to add new facts and Count including violation of right to Interstate Travel. In April, the defendant submitted a Supplement Certification admitting he deceived the Court.

On April 22, 1994, the Motion Judge denied plaintiff's Motion for Excused Joinder (after a complaint was filed in the Southern District on April 20). The Judge was required to either excuse or order joinder. The denial was based on a mistake on an adjournment issue made by the Judge's Chambers and fraud by opposing counsel whereby opposing counsel told his office they were not permitted to answer any questions of the plaintiff. On April 29, Summary Judgment oral arguments were held before Judge Dupuis. Before the session, plaintiff observed the former New Jersey Attorney General waiting outside Judge Dupuis Chambers to be let in. General Poritz was then representing the NJ defendants in the related Southern District case. It appears the Attorney General met with the Judge for the purpose of influencing the outcome of the litigation. On June 30, the Superior Court granted Summary Judgment to the defendant.

On January 18, 1995, Appellate Judge Keefe was disqualified from participation in appeal on the Motion of plaintiff. (Judge Keefe previously voluntarily recused himself from a previous appeal in the case.) On March 27, the Appellate Division was asked to Stay the proceedings premised on the Constitutional challenges filed in the Southern District. The request was denied. On April 25, on plaintiff's motion to the Appellate Division for Reconsideration, the defendant admitted to substituting evidence. In so doing admitted he defrauded the court. Reconsideration was denied on May 24.

On August 9, 1995, plaintiff motioned the New Jersey Superior Court for a Vacate of the Summary Judgment and the Voluntary Recusal of Judge Dupuis. The request was based on an article published in the New Jersey Star Ledger, June 21, 1995, wherein the state court defendant basically admitted he had defrauded the Court. On October 2, Judge Hoens denied the motion. She said that the request to recuse Judge Dupuis was moot as she was transferred to another vicianage. (Judge Dupuis did not disclose that she was a colleague of opposing counsel and that she personally knew one of the defendant's "witnesses" until after oral arguments on April 29, 1994, the same day it is alleged she violated judicial ethics law by meeting with the former New Jersey Attorney General.)

On January 12, 1996, the New Jersey Supreme Court denied a Stay, Petition for Certification. On January 27, the plaintiff filed a Motion for Reconsideration, or alternatively a Stay. The basis was that the Complaint was filed in the New Jersey District Court and that the threshold matters in the Federal Complaint had to be first decided before the State Court could reach a decision on the matter. The request was denied on March 6. On March 16, plaintiff filed a Motion for Relief from Judgment or Order, a Second Motion for Reconsideration, or alternatively a Stay. The basis was that the Default entered on April 17, against the NJ Defendants had the effect of Staying the related New Jersey Court decisions. As Judge Thompson wrote, that Motion is still pending in the New Jersey Supreme Court.

On June 8, 1995, a Grievance was filed against the former Attorney General with the Southern District Committee on Grievances. The Committee refused to exercise jurisdiction because she was not on the "roles of the Court" [although Local Rules permitted the exercise]. Pending before the Second Circuit Court of Appeals is a November 26, 1996, Motion to Extend the Time to Appeal to the Supreme Court. I/M/O Poritz, docket 96-7164. (The grievance will be appealed with the other related Second Circuit case.) Prior to

that, plaintiff applied to the New Jersey Advisory Committee on Judicial Ethics to file a complaint against the Attorney General and the Superior Court Judge. An ethics grievance was filed against the former Attorney General with the Office of Attorney Ethics, Supreme Court of New Jersey. The Complaint was for her participation in a meeting with Judge Dupuis for the purpose of influencing both the Superior Court and Southern District cases. On January 31, 1996, the District Ethics Committee for Mercer County disqualified itself from the matter. On February 20, the Counsel to the Director indicated that the matter was not subject to the attorney disciplinary system because a "conspir[acy] to commit fraud upon the Southern District of New York ... should be reported to the appropriate federal law enforcement agency." The matter related to Judge Dupuis was being listed for discussion. On December 26, 1995 an appeal was made of the ACJC's refusal to permit access to the investigation. On April 24, 1996, the New Jersey Supreme Court said there was good cause (presumably self serving) to deny the petition for review. (Docketed as 42,046). Presumably the ACJC found "probable cause" to believe there has been an ethics violation because no notice has been given that the matter has not been closed.

REASONS FOR GRANTING THE WRIT

The petition for a writ of certiorari should be granted including the reasons stated in Supreme Court Rules 10 and 11. The Order vacating the default was immediately appealable as the consequences of the Order had the effect and were the equivalent of refusing and dissolving an injunction. 28 U.S.C. §1292; Carson v. American Brands, Inc., 101 S.Ct. 993, 450 U.S. 79, 67 L.Ed.2d 59 (1981) Showing of irreparable harm is not required. Id. The default was the equivalent of a stay order under the "All Writs Act" that Judge Thompson refused on March 11, 1996 and of a March 19, 1996, request for an Order to Show Cause why the New Jersey state proceedings should not be stayed that Judge Thompson' never granted or denied.

The filing of an appeal of the vacatur was an event of jurisdictional significance -- it conferred jurisdiction on the court of appeals and divested the district court of its control over those aspects of the case involved in the appeal. Griggs v. Provident Consumer Discount Co. 459 U.S. 56, 103 S.Ct. 400, 74 L.Ed.2d 225 (1982) (*per curiam*). Until the mandate issues and returns it to the district court, the case was "in" the court of appeals, and any action by the district court was a nullity. (Citations omitted.) Judge Thompson lacked jurisdiction to dismiss the complaint pending appeal of the vacatur of the default and the Order dismissing the complaint on preclusion principles is a nullity.

The subsequent Order dismissing the Complaint was based on the state proceedings that plaintiff sought to stay. The sole purpose of the vacatur was to surrender jurisdiction of a federal suit to a state court. Moses H. Cone Memorial Hosp. v. Mercury Const. 460 U.S., 103 S.Ct. 927, 74 L.Ed.2d 765 (1983). That Order dismissing the complaint is null and void as the vacatur was appealable under the Collateral Order doctrine. Id. (Orders are immediately appealable when the *res judicata* effect of the state court judgment would preclude further litigation in the federal forum.) An order must be considered a final order appealable under 28 U.S.C. § 1291 when it effectively renders appellant out of the federal court. Id. A Notice of Appeal was subsequently filed with reservation to the extent that the Appeal of the vacatur of default divested the district court of jurisdiction to dismiss the complaint. If the appeal was premature, it is converted without jurisdictional defect into a 28 U.S.C. § 1291 Notice of Appeal. Id.

Plaintiff properly invoked the subject matter jurisdiction of the District Court. The complaint presents a constitutional challenge to bar admission rules that the District Court possessed subject matter jurisdiction to review. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). A federal district court does not review a state court judicial decision when it entertains a challenge to the constitutionality of state general rules and regulations governing admission to the bar. Id. 460 U.S at 486. Defendants act

in a non-judicial capacity in promulgating rules regulating admission to the bar. Id. at 462. Moreover, claims for violation of the federal antitrust laws have been held to be within the exclusive jurisdiction of the federal courts. Freeman v. Bee Machine Co., 319 U.S. 448 (1943). A United States District Court has subject matter jurisdiction under § 4 of the Sherman Act (15 U.S.C. § 4) to prevent and restrain violations by the ABA of § 1 of the Sherman Act (15 U.S.C. § 1). *See e.g.* United States of America v. American Bar Association, 95 Civ. 1211 (CRR) (D.C.D.C. 1995).

Judge Thompson vacated the Default without cause as the only cause was self serving to the defendants. Judge Thompson committed reversible error by never considering, discussing or examining the factors necessary before examining whether or not to vacate a default. The defendants never showed good cause for vacating the Default. They failed to meet the threshold requirement of establishing a meritorious defense. The plaintiff was severely prejudiced by setting aside and vacating the default. By default, defendants' admit every matter alleged in plaintiff's complaint. The defendants did not show their conduct was culpable. It is obvious by the fact that not one, but three separate sets of defendants defaulted, that there was an attempt by defendants to gain a tactical advantage in this matter. Moreover, by the ABA counsel's own admission, the ABA's conduct was culpable. There is sufficient evidence on the face of the record from which the court can find that defendants' delay was intentional, willful and in bad faith. Furthermore, contrary to decisional law of this Circuit, the District Judge did not vacate the default to decide the merits of the case. (Citation omitted.) For example, Judge Thompson committed reversible error by "dismissing" the complaint against the NY defendants on the basis of a waivable defense.

It is clear the appeal of the vacatur is justiciable considering the relationship of the default to the issues related to delegation of power. The stay of the New Jersey proceeding concerns a New Jersey state case where the Court lacked subject matter jurisdiction over the claims necessary to resolve the entire controversy. As the

constitutional claims ripened in this matter, the state court lacked subject matter jurisdiction to answer the threshold questions raised in this complaint, including the delegation of power question. That unconstitutional delegation of power was the basis that prohibited plaintiff from taking take the February and July 1994 New York State Bar examinations. Before the New Jersey Court could reach the questions pending before them, first must be decided the constitutionally of Supreme Court rules and the delegation of power.

A crucial question in examining delegation of power is the interests at issue and the risk of erroneous deprivation. The Supreme Court specifically rejects any delegation of power without adequate Fourteenth Amendment safeguards to "private" or state actors who can affect interstate activities. Highland Farms Dairy v. Agnew, 300 U.S. 608, 614, 557 S.Ct. 549, 552 (1937) (Court does not condone *private* agency's regulation of *intra*state activity.); Eubank v. Richmond, 226 U.S. 137, 33 S.Ct. 76 (1914); Polar Ice Cream & Creamery v. Andrews, 375 U.S. 361, 377, 84 S.Ct. 378, 387 (1964) (Court rejected *state* agency regulation of *inter*state activities). Defendants, including SHU and the ABA, are state actors for purposes of admission to the Bar. Lombardi v. Tauro, 470 F.2d 798 (5th Cir. 1972) *cert denied* 412 U.S. 919 (State law requirement that candidates for admission to the state bar be graduates of a qualified law school inevitably causes a private law school to become affected with "state action".) A "State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment." Schware v. Board of Bar Examiners, 353 U.S. 232, 238-9, 77 S.Ct. 752, 755-6 (1956). The root requirement of the Due Process Clause is that an individual be given an opportunity for a hearing at a "meaningful time" *before* [that individual] is deprived of any significant property interest. *See generally* Boddie v. Connecticut, 401 U.S. 371, 379, 91 S.Ct. 780, 786 (1971); Bell v. Burson, 402 U.S. 535, 542, 91 S.Ct. 1586, 1591 (1971); Goldberg v. Kelly, 397 U.S. 254, 267-68, 90 S.Ct. 1011, 1020, (1970) (interest in

continued receipt of benefits are safeguarded by procedural due process); Cleveland Bd. Of Education v. Loudermill, 470 U.S. 532, 105 S.Ct. 1487 (1985); Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191 (1965); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313, 70 S.Ct. 652, 656 (1950). An individual possesses a Constitutional liberty and property interest in a law degree once beginning a course of study. Anderson v. University of Wisconsin, 665 F.Supp. 1372, 1396 (W.D.Wis. 1987) *aff'd* 841 F.2d 737 (7th Cir. 1988), *citing* Martin v. Helstad, 578 F.Supp. 1473, 1480 (W.D.Wis 1983); Board of Curators of the University of Missouri v. Horowitz, 435 U.S. 78, 84, 98 S.Ct. 948, 952 (1978) (constitutionally protected liberty or property interest in the pursuit of a medical degree.); Greenhill v. Bailey, 519 F.2d 5 (8 Cir. 1975) (student deprived of a significant interest in liberty in that it made it improbable that he would be able to pursue his medical education elsewhere.) The credits that make up scholastic degrees are afforded the same due process protection that those degrees are afforded. Merrow v. Goldberg, 672 F.Supp. 766 (D.C.V.T. 1987). Moreover, the right to take the bar exam is constitutionally protected on the same basis as an individual's right to qualify for the practice of law. Greene v. McElroy, 360 U.S. 474, 79 S. Ct. 1400 (1959); Schware v. Board of Bar Examiners of the State of New Mexico, 353 U.S. 232, 77 S. Ct. 752 (1957) (applicant for state bar examination denied opportunity to qualify for the practice of law contrary to the Due Process Clause of the Fourteenth Amendment); In Re Griffiths, 413 U.S. 717, 93 S.Ct. 2851 (1973) (resident alien has constitutional right to take bar examination to qualify for the practice of law); Baccus v. Karger, 692 F.Supp. 290, 295 (S.D.N.Y. 1988) (The court found the practical effect of taking the bar exam is basically the same as admission to the bar and, therefore, admission to the practice of law. The court applied the same constitutional tests to examine an individual's right to take a bar examination as would be used to examine an individual's right to qualify for the practice of law.) The deprivation of a constitutional right is an irreparable injury. (Citation omitted.)

Defendants are directly involved in the accreditation process and have nationwide contacts. Omni Capital International v. Rudolf Wolff & Co., 484 U.S. 97 (1987) (The constitutional limits of the court's personal jurisdiction in such a federal question case requires only that a defendant have "minimum contacts" with the United States.) By their own admissions they are involved in the process and policy that delegated unconstitutional power to Seton Hall law school. It is unconstitutional to delegate power without the minimum due process required by the Constitution. By their own admissions, they involved themselves in policy that caused at a minimum a constitutional tort. Monell v. New York City Dept. of Soc. Servs., 436 U.S. 658 (1978). *See also* Collins v. City of Harker Heights, Tex. 112 S.Ct. 1061, 1066 (1992). Plaintiff was erroneously deprived of property and liberty interests that adequate safeguards would have prevented.

As the constitutional claim ripened, plaintiff immediately filed a complaint in the Federal Court. Requests were made to both the Southern District and the New Jersey state courts for a stay until the issues were decided in federal court and for excused joinder of claims. It is undisputed that the related state proceeding court did not consider the delegation of power issue. This matter has yet to be decided on the merits. Clearly the delegation of power issue must first be decided in a Federal Court (citation omitted.) Therefore, since the standards governing the state court from the District Court were significantly different, the state court "ruling" could not be given preclusion effect in federal court. Davidson v. Capuano, 792 F.2d 275, 278 (CA2 1986) (no preclusion when initial forum did not have power to award the full measure of relief sought in the later litigation.) There is reasonable doubt as to what was decided by the state court proceeding and should be resolved against using it as an preclusion. (Citation omitted.) The New Jersey decisions are clearly erroneous and therefore no preclusive effect in a federal proceeding. Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 591 A.2d 592 (1991). The New Jersey Courts were requested to stay their proceedings pending the outcome of this case. Judge Thompson herself acknowledged even

the Seton Hall defendants' own admission, that a motion for reconsideration is currently pending is before the New Jersey Supreme Court, docketed as Case No. 40,895.

Although Judge Thompson lacked jurisdiction upon appeal, she dismissed the complaint on preclusion principles despite the fact the Complaint was not precluded by the related state court action under either Res Judicata or the N.J. Entire Controversy Doctrine. The New Jersey Entire Controversy Doctrine specifically allows exceptions to the doctrine. It says, "to the extent required by the Entire Controversy Doctrine. N.J.R.C.P. 4:30A. (Emphasis added.) There are an extensive amount of circumstances where the doctrine does not apply. *See e.g.*, Burrell v. Quaranta, 259 N.J. Super. 243 (A.D. 1992) (Court has no jurisdiction over the claim ...); Bennun v. Rutgers State University 941 F.2d 154, 167 (CA 3 1991) (New Jersey's courts would not apply the entire controversy doctrine to this case ...); Nanavati v. Burdett Tomlin Memorial Hosp., 857 F.2d 96 (CA 3 1988) (preclusion does not apply to claims over which the initial New Jersey court lacked jurisdiction.) An exception is made to the entire controversy doctrine when there is an inequality of forums. Cafferata v. Peyser, 251 N.J. Super. 256 (1991); Thornton v. Potamkin Chevrolet, 94 N.J. 1 (1983). *see also* Nanavate v. Burdette Tomlin Memorial Hosp., 857 F.2d 96 (CA 3 1988) (Anti-trust claims are not precluded by any state court decision.) Clearly the New Jersey state courts was an inferior court and lacked subject matter jurisdiction over constitutional claims, the underlying delegation of power and anti-trust issues raised in this federal proceeding. The state court did not have concurrent jurisdiction to hear the claim now sought to be concluded. There is no likelihood that it would have exercised jurisdiction to hear these claim. Moreover, the state proceeding should have been stayed. 28 U.S.C. § 1651(a), 28 U.S.C. §2283. Therefore, a opinion entered by a court without subject matter jurisdiction is not entitled to full faith and credit. There is no automatic application of the doctrines. The entire controversy doctrine does not "require joinder of all claims and parties in the New Jersey action." The doctrine permits the preservation of claims for subsequent litigation. The Third

Circuit has already ruled that under the New Jersey Entire Controversy Doctrine, the request for excused joinder of parties or claims perfects the right to adjudicate related matters in a separate forum. Claims are not later barred elsewhere when a party requests excused joinder from a state court to litigate in federal court. Bernardsville Quarry v. Borough of Bernardsville, 929 F.2d 927, 930 (CA3 1991); Ditrolio v. Antiles, 142 N.J. 253, 275 (1995); Cogdell at 28; Brown v. Brown, 208 N.J. Super. 372, 382 (A.D. 1986). The Court in Bernardsville Quarry said that a litigant can avoid the effect of the Doctrine by informing the state court of intention to return to the federal court to litigate its federal claim. Id. at 930. To satisfy the doctrine, a party need only assert the claim. Burrell v. Quaranta, 259 N.J. Super. 243 (A.D. 1992) *citing* Woodward-Clyde, 105 N.J. at 473 (citation omitted.) Moreover, a "constituent" claim arising during the litigation is not barred from subsequent suit when a motion is made in the original action for leave to a supplement pleading has been denied. Brown v. Brown 208 N.J. Super. 372, 384 (A.D. 1986). The state court was on notice of other claims and issues. The plaintiff requested excused joinder from the motion judge in the state court and asked the Southern District to waive the requirement to seek the excused joinder. The state court judge was required to either grant excused joinder or order joinder of the claims and parties. (Citation omitted.) The motion judge committed reversible error by not excusing joinder or order severance. However, by not ordering joinder or granting the severance, the "judgment" in the state case has no preclusive effect to the instant case. Moreover, the doctrine does not apply to any subsequent issues filed prior to entry of final judgment. State v. Standard Tank, 284 N.J. Super. 381, 395 (A.D. 1995). The entire controversy doctrine does not apply to unknown or unaccrued claims. N.J.R. 4:30A. It is clear that the claim did not ripen until well after the filing of the suit in the New Jersey Superior Court after the SHU defendants refused to certify plaintiff's graduation to take the February 1994 New York Bar exam.

It is evident the conditions for applying *res judicata* are not met. For example, under New Jersey law, *res judicata* does not apply

when (1) the judgment in the first action is not valid, final or on the merits; (2) the parties in the second action are not in privity with those in the first action; and (3) the claim in the later action does not grow out of the same transaction or occurrence as the claim in the first action. Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398 (1991). *Res judicata* does not apply when a party did not have a "full and fair opportunity" to litigate those issues in the earlier case. Montana v. U.S., 99 S.Ct. 970, 973 (1979). Preclusion does not apply because the plaintiff did not have a "full and fair opportunity" to litigate those issues in the earlier case. The record is clear the plaintiff did not have a full and fair opportunity to litigate the issues and claims in the state action. For example: discovery was not complete prior to the state court consideration of summary judgment. Plaintiff was deprived of crucial witnesses and evidence; Plaintiff was denied a motion to amend the complaint; neither the claims nor the transaction was the same; and Summary Judgment in the state action was inappropriate. Moreover the instant case is not precluded by the "state action" because no privity existed as their was proof the SHU defendants would not indemnify the state action defendant nor provide him with documents. *see e.g.*, Stegneier v. St. Elizabeth Hosp. 239 N.J. Super. 475, 486 (A. D. 1990) *citing* McFadden v. Turner, 159 N.J. Super. 360 (A.D. 1978) (Cause of action against hospital and its employees can be split.) Finally, in this case is the suggestion that the outcome in the related state case was procured by fraud and perjury.

Moreover, under New Jersey law, a state court decision has no preclusive effect until the United States Supreme Court has denied petition for *certiorari*. *See e.g.* Hodgkin v. Applegate, 31 N.J. 29, 43 (1959). The New Jersey state court "decision" is not final, valid and on the merits. Pending an appeal, a judgment lacks that character of finality which is requisite to constitute *res judicata*. McCusker v. Commonwealth Cas. Co., 106 N.J. 116 (1930); DeCamp v. Miller, 44 N.J.L. 617 (1882). Currently pending is a motion for Reconsideration that is based, in part, on the default entered against the NJ defendants. Moreover, under New Jersey law, the New Jersey Appellate Decision was appealable as of right.

For example, an Appellate Judge was removed making the decision appealable as a matter of right because the decision was not unanimous. *See e.g.*, Brandenburg v. Brandenburg, 83 N.J. 198 (1980). The subject matter was appealable as of right and certification under the New Jersey Supreme Court's supervisory powers to regulate the practice of law. N.J.R. 2:2-1(a)(4), N.J. Const. Art. VI, §II, ¶ 3; NJ State Bar Ass'n v. NJ Ass'n of Realtor Bds., 93 N.J. 470 (1983); Application of Matthews, 94 N.J. 59 (1983). Moreover, it is naive to believe the NJ defendants could fairly judge themselves. Therefore, the state court "judgment" is null and void and not a bar to the instant case.

The related Southern District action has no preclusive effect on the New Jersey District Court action since it was dismissed without prejudice. The case was dismissed for reasons including lack of jurisdiction and venue. A court has no power to render a valid judgment when it rules it lacks personal jurisdiction or is an improper venue. "A dismissal for want of subject matter or personal jurisdiction is not a decision on the merits. Consequently, upon such a dismissal the plaintiff is free to institute the suit anew in a jurisdiction or under circumstances supporting jurisdiction." n.4 Robinson v. Overseas Military Sales Corp., 21 F.2d. 502, 507 n.4. (CA 2 1994) *citing* Commonwealth Land Title Ins. Co. v. United States, 759 F.Supp. 87, 90 (D.Conn. 1991). Moreover, dismissal of the Complaint on the entire controversy doctrine is without prejudice. Mortgageling Corp. v. Commonwealth Land Title, 142 N.J. 336, 348 (1995). Full faith and credit can not be given to it because it was entered by a court that said it was "without jurisdiction." The entire controversy doctrine was not applicable to bar the Southern District case since the doctrine could not be exported. *See e.g.*, Id. Moreover, Defendants omitted the defense from their answer and thereby waived this defense as plaintiff objected to its subsequent pleading. N.J.R. 4:5-4. Plaintiff requested of Judge Keenan to excuse joinder. Plaintiff at a minimum perfected the claims for federal court by serving notice on the state court of the intention to file suit in federal court. As the record shows, this was requested before the superior court case was

decided. The Southern District Complaint was filed April 20, 1994 that was before the June 30, 1994 "granting" of "summary judgment" in New Jersey Superior Court. Burrell at 250 (second claim asserted after initial claim disposed precludes application of the doctrine.) For that opinion to have been on the merits, Judge Keenan would have found an unconstitutional delegation of power. Moreover, the Anti-trust claims raised in the Second Amended Complaint provided for nationwide service of process and venue under 15 U.S.C. § 22. This provision for nationwide service of process means that a federal district court's jurisdiction is coextensive with the boundaries of the United States. *See e.g.*, American Trade Partners v. A-1 Int'l Importing Enter Inc., 755 F.Supp. 1292, 1302 (E.D.Pa. 1990). Moreover, the related Southern District case was dismissed instead of being transferred when the federal case was filed before the state case was decided that was used for preclusive effect instead of being transferred. Burnett v. New York Central R.R. Co., 380 U.S. 424, 430, 85 S.Ct. 1050, 1055 (1965) (The Supreme Court held that "It is in the interests of Justice to transfer a case rather than dismiss when refiling of this action in the proper venue would be barred by applicable statutes of limitations") *See also* Goldvaur Inc. v. Herman 369 U.S. 463, 467 82 S.Ct. 913, 916 (1962) (Case should be transferred to save parties the time and expense of refiling this lawsuit in a different district.); 28 U.S.C. § 1406(a).

CONCLUSION

Petitioner respectfully requests the petition for a writ of certiorari be granted.

Respectfully submitted,

Petitioner Anonymous

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

April 8, 1997 C-104

No. 96-5403

Anonymous, Appellant

v.

Wilentz, et al.

(District of N.J. (Trenton) D.C. Civil 96-cv-00452) (AET)

Present: MANSMANN, SCIRICA, AND LEWIS, Circuit Judges.

Motion by Appellees, New Jersey Supreme Court Justice Robert Wilentz, and Associate Justices Robert L. Clifford, Alan B. Handler, Stewart G. Pollock, Daniel J. O'Hern, Marie L. Garibaldi, and Gary S. Stein to dismiss appeal.

Response by Appellant in opposition to motion to dismiss, received.

signed
Laura L. Davis 597-5017
Case Manager

ORDER

The forgoing *motion to dismiss is granted for want of jurisdiction*

By the Court,
Carol Los Mansmann - signed
Circuit Judge

Dated: May 5, 1997
LD/cc: *redacted* Esq.
Arnold D. Fleischer, Esq.
Matthew R. Gabrielson, Esq.
Darrell M. Joseph, Esq.
Rocky L. Peterson, Esq.

A

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ANONYMOUS,
Plaintiff,

v.

CHIEF JUSTICE WILENTZ, et al.,
Defendants.

Civil No. 96-452 (AET)

ORDER

ENTERED DOCKET
3-11-96

This matter is before the Court on motion of plaintiff Anonymous for a "Temporary Injunction - Writ of Mandamus" to stay proceedings in the New Jersey Supreme Court relating to the above-captioned action.

WHEREAS, on January 29, 1996, plaintiff instituted this action against, *inter alia*, the Justices of the New Jersey Supreme Court, the Chief Judge and Associate Judges of the New York Court of Appeals, Seton Hall University, and the American Bar Association, alleging antitrust violations relating to plaintiff's admission to the New Jersey and New York bars:

WHEREAS, in support of the present motion, plaintiff has submitted a one-page letter memorandum. No opposition has been filed. The letter memorandum appears to argue that this Court should stay proceedings in a case before the Supreme Court of New Jersey, docketed as Case No. 40,895. However, plaintiff has presented no arguments to persuade the Court that the extraordinary relief requested is warranted.

It is on this 5th day of March, 1996:

ORDERED that plaintiff's motion for a Temporary Injunction - Writ of Mandamus be and hereby is **denied**.

signed

ANNE E. THOMPSON, CHIEF JUDGE

B

P.O. Box 315
Liberty Corner, New Jersey 07938
(908) 604-9263

Received MAR 1996
William Walsh Clerk

March 16, 1996

Chambers of the Honorable Anne E. Thompson, Chief Judge
United States District Court
District of New Jersey
Clarkson S. Fisher U.S. Courthouse
402 E. State Street
Trenton, New Jersey 08608

Re: I/M/O Anonymous v. Wilentz *et. al.* 96 Civ. 452 (AET)

Dear Honorable Judge Thompson:

Please accept this letter-memorandum in support of plaintiff's *ex parte* Motion for an order to the New Jersey Supreme Court defendants to show cause why the Motion for Relief From Judgment or Order or Second Motion for Reconsideration pending before them should not be stayed (Pa1); and why plaintiff should not be permitted access to records of an investigation ACJC 95-199 of a Superior Court Judge related to that case. The previous motion for a Mandamus and Temporary Restraining Order was unopposed on the papers. The NJ, NY, ABA defendants were first sent notice of the motion and received second notice of the return date, a Summons and Complaint (*e.g.*, Pa2-3). Seton Hall defendants' Counsel recently stated they were not authorized to receive service. The refusal to reply appears to be for delay. Defendants are in the process of being be served again (*e.g.* Pa4).

A Federal Court is empowered to issue a Writ and Stay a New Jersey state action as necessary in the exercise of the Court's power, including Civil Rights actions. 28 U.S.C. §§ 1651(a) and 2283. It is an inefficient use of judicial resources to continue the New Jersey proceedings until several Federal Constitutional issues are first

resolved. This includes the delegation of power question and the fairness of the New Jersey Superior Court proceeding that are Constitutionally infirm. The New Jersey defendants lack the capacity and cannot fairly examine those issues.

A crucial question in examining delegation of power is the interests at issue and the risk of erroneous deprivation. The United States Supreme Court specifically rejects any delegation of power without adequate Fourteenth Amendment safeguards to "private" or state actors who can affect interstate

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IMO ANONYMOUS,	:	
	:	
Plaintiff,	:	CERTIFICATE OF CLERK
	:	
-vs-	:	CIVIL 96-452 (AET)
	:	
CHIEF JUSTICE WILENTZ, et al.,	:	
Defendants	:	

It appearing the plaintiff having requested the entry of default as to the defendants, **chief Justice Wilentz, NJ Justices Clifford, Handler, Pollock, O'Hern, Garibaldi and Stein,** (all served on March 19, 1996), **and The American Bar Association** (served March 22, 1996) for failure to plead:

It appearing said defendants were properly served **on the aforementioned dates;**

It is hereby certified default for failure to plead has been entered this **April 17, 1996** against said defendants.

William T. Walsh, Clerk
by Michael D. Shanklin
Deputy Clerk

Original Filed
APR 17 1996
WILLIAM T. WALSH, Clerk

PLAINTIFF IS HEREBY ADVISED THAT HE MUST FILE A FORMAL MOTION TO THE COURT FOR THE ENTRY OF DEFAULT JUDGMENT. THE MOTION MUST BE IN COMPLETE COMPLIANCE WITH LOCAL RULE 12 OF THIS DISTRICT.

D

ORIGINAL FILED JUNE 11, 1996

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ANONYMOUS,	:	
	:	
Plaintiff,	:	CIVIL 96-452 (AET)
	:	
-vs-	:	ORDER
	:	
CHIEF JUSTICE WILENTZ, et al.,	:	
	:	
Defendants	:	

This matter is before the Court on three motions to set aside entry of default pursuant to Fed. R. Civ. P. 55(c). Defendants Chief Justice Robert Wilentz, Justice Robert Clifford, Justice Alan Handler, Justice Steward Pollock, Justice Daniel O'Hern, Justice Marie Garibaldi and Justice Gary Stein ("NJ State defendants") move for an Order setting aside default which was entered against them on April 17, 1996. Defendants Chief Judge Kaye, Judge Bellacosa. Judge Ciparick, Judge Levine, Judge Simons, Judge Smith and Judge Titone ("NY State defendants") also move for an Order setting aside default. Finally, defendant American Bar Association ("ABA") moves to set aside the entry of default.

WHEREAS, on January 29, 1996, plaintiff instituted this action against, *inter alia*, the Justices of the New Jersey Supreme Court, the Chief Judge and Associate Judges of the New York Court of Appeals, Seton Hall University, and the American Bar Association, alleging antitrust violations relating to plaintiff's admission to the New Jersey and New York bars;

...

E

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ANONYMOUS,	:	Civil Action
Plaintiff	:	96-452 Rec'd JUNE 24 1996 USCA 3rd Cir.
-against-	:	
	:	Notice of Motion
CHIEF JUSTICE WILENTZ,	:	
et al.,	:	Leave to Appeal
	:	Sat below:
	:	Hon. Anne E. Thompson, C.J.

PLEASE TAKE NOTICE that the plaintiff-appellant shall make application to the Court of Appeals for the Third Circuit for leave to appeal the Order vacating the default entered in the above-referenced matter.

PLEASE TAKE FURTHER NOTICE that in support of this application the undersigned will rely upon the annexed letter-memorandum and appendix.

CERTIFICATION

By copy hereof the undersigned certifies that on this day an original and three (3) copies of this Notice of Motion, letter-memorandum and appendix were mailed to the Court of Appeals for the Third Circuit; and that a copy of the same were mailed to the Clerk's Office, United States District Court, Trenton, New Jjersey; Elizabeth Hutton, Esq., Hill Wallack, 202 Carnegie Center, Princeton, New Jersey 08543, Attorney for the ABA; Carolyn Olson, AAG, NY Dept. of Law, 120 Broadway, 24th Floor, New York, NY 10271; Matthew Gabrielson, DAG, NJ Dept. of Law, CN112, Trenton, N.J. 08625; and Steven Backfisch, Esq., Whipple Ross & Hirsh, 9 Campus Drive, Parsippany, N.J. 07054, attorneys for Seton Hall Law School.

signed redacted

P.O. Box 315, Liberty Corner, New Jersey 07938
(908) 604-9263
June 21, 1996

UNITED STATES DISTRICT COURT
VICIANGE OF TRENTON NEW JERSEY

IN THE MATTER OF ANONYMOUS,
Plaintiff - Appellant,
-against-
CHIEF JUSTICE WILENTZ, JUSTICES CLIFFORD, HANDLER, POLLOCK, O'HERN, GARIBALDI, STEIN individually and in their official capacity as Judges of the Supreme Court of the State of New Jersey (herein-after the "New Jersey Defendants"); New Jersey Rules for Admission to the Bar; CHIEF JUDGE JUDITH S. KAYE, and ASSOCIATE JUDGES JOSEPH BELLACOSA, CARMEN BEAUCHAMP CIPARICK, HOWARD A. LEVINE, RICHARD D. SIMONS, GEORGE BUNDI SMITH, and VITO J. TITONE individually and in their official capacity as Judges of the Court of Appeals of the State of New York; (herein-after the "New York Defendants"); the New York Rules for Admission to the Bar; SETON HALL UNIVERSITY, A Corporation of the State of New Jersey SETON HALL UNIVERSITY SCHOOL OF LAW, A Corporation of the State of New Jersey, THE BOARD OF REGENTS OF SETON HALL UNIVERSITY : (J. Doe 1 - 27) THE TRUSTEES OF SETON HALL UNIVERSITY (J. Does 28 -31) THE TRUSTEES OF SETON HALL UNIVERSITY SCHOOL OF LAW (J. Does 32 - 45), Dean RONALD J. RICCIO, Professor CAROL R. GOFORTH, Professor D MICHAEL RISINGER, individually and in their official capacities; (herein-after the "SHU Defendants:) The AMERICAN BAR ASSOCIATION, Defendants - Appellees.

Civil Action
NOTICE OF APPEAL

FILED
MAR 7 1997

Sat Below:
Hon. Anne E. Thompson
96-452 (AET) the

UNITED STATES DISTRICT COURT
VICIANGE OF TRENTON NEW JERSEY

IN THE MATTER OF ANONYMOUS,
Plaintiff - Appellant,
-against-
CHIEF JUSTICE WILENTZ, JUSTICES CLIFFORD, HANDLER, POLLOCK, O'HERN, GARIBALDI, STEIN individually and in their official capacity as Judges of the Supreme Court of the State of New Jersey (herein-after the "New Jersey Defendants"); (AET) the New Jersey Rules for Admission to the Bar; CHIEF JUDGE JUDITH S. KAYE, and ASSOCIATE JUDGES JOSEPH BELLACOSA, CARMEN BEAUCHAMP CIPARICK, HOWARD A. LEVINE, RICHARD D. SIMONS, GEORGE BUNDI SMITH, and VITO J. TITONE individually and in their official capacity as Judges of the Court of Appeals of the State of New York; (herein-after the "New York Defendants"); the New York Rules for Admission to the Bar; SETON HALL UNIVERSITY, A Corporation of the State of New Jersey SETON HALL UNIVERSITY SCHOOL OF LAW, A Corporation of the State of New Jersey, THE BOARD OF REGENTS OF SETON HALL UNIVERSITY : (J. Doe 1 - 27) THE TRUSTEES OF SETON HALL UNIVERSITY (J. Does 28 -31) THE TRUSTEES OF SETON HALL UNIVERSITY SCHOOL OF LAW (J. Does 32 - 45), Dean RONALD J. RICCIO, Professor CAROL R. GOFORTH, Professor D MICHAEL RISINGER, individually and in their official capacities; (herein-after the "SHU Defendants:) The AMERICAN BAR ASSOCIATION, Defendants - Appellees.

Civil Action
AMENDED NOTICE OF APPEAL
Sat Below:
Hon. Anne E. Thompson
96-452
CA 96-5403
CA 97-5129

FILED
MAY 16 1997

Hx/

Notice is hereby given that plaintiff-appellant Anonymous hereby "appeals" to the United States Court of Appeals for the Third Circuit from the following Orders and inaction:[1]

Denial of a Motion for an Injunction staying a related New Jersey State proceeding (March 11, 1996); Refusal to issue an Order to Show Cause staying a related New Jersey State proceeding (March 19, 1996); Refusal to issue an Order to Show Cause demanding that plaintiff be permitted access to records of an investigation of a complaint ACJC 95-199 filed with the Supreme Court of New Jersey Advisory Committee on Judicial Conduct (March 19, 1996); Refusal to stay and adjourn the Motions to Dismiss pending appeal; Denial of an injunction prohibiting the publication of defamatory information (filed July 8, 1996); Denial of Protective and Sealing Orders (July 22, 1996); Refusal to Certify vacatur for appeal (July 22, 1996); Dismissal of the complaint (July 22, 1996 and November 22, 1996); Denial of plaintiff's motion to Order the correct dating of plaintiff's diploma and graduation as January 1994, and not August 1994 (November 22, 1996); Refusal to extend the time to appeal the dismissal of the complaint (November 6, 1996); Denial of Reconsideration (December 20, 1996); and Judge Thompson's Order Filed April 16, 1997 denying plaintiff's Motion to file a Notice of Appeal as within time.

CERTIFICATION

By copy hereof the undersigned certifies that on this day an original and three (3) copies of this Notice of Appeal, letter-memorandum and appendix were mailed to the United States District Court, Trenton, New Jersey, and that a copy of the same were mailed to E. Hutton, Hill Wallack, 202 Carnegie Center, Princeton, New Jersey 08543, M. Gabrielson, NY Dept. of Law, 120 Broadway, 24th Floor, New York, NY 10271; M. Kennedy, NJ Dept. of Law, CN 112, Trenton, N.J. 08625; and S. Backfisch, Whipple Ross & Hirsh, 9 Campus Drive, Parsippany, N.J. 07054.

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[1]With Reservation and Objection to the refusal by the Third Circuit Staff Attorney's refusal to submit the previous supplemental Notice of Appeal to the Court.

signed redacted
P.O. Box 315
Liberty Corner, New Jersey 07938
908/604-9263
May 15, 1997

Dated:

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Nos. 96-5403 & 97-5129

Anonymous v. Wilentz

To: Clerk

1) Motion by Appellees, New Jersey Supreme Court Chief Justice Robert Wilentz and Associate Justices Robert L. Clifford, Alan B. Handler, Stewart G. Pollock, Daniel J. O'Hearn, Marie L. Garibaldi, and Gary S. Stein, to File a supplemental Appendix in 96-5403.

2) Motion by Appellee, American Bar Association, to File a Supplemental Appendix and For Extension of Time which shall be construed as a Motion to File Brief Out of Time and to File a Supplemental Appendix in 96-5403.

3) Response by Appellant to Motions at (1) and (2) and Appellant's Motion for Extension of Time to File Reply Brief in 96-5403.

4) Motion by Appellant to Stay Appeal in 97-5129 which shall be construed as a Motion to Stay the Briefing in 96-5403 pending the jurisdictional issue in 97-5129.

5) Motion by Appellant for Sanctions in 96-5403.

The foregoing Motions and Responses are considered. The motion at (2) is granted with filing of appellee's brief and supplemental appendix as of the date of this order. The motion at (1) is granted provided that the documents found in appellees' supplemental appendix are not duplicative of documents filed by appellee, American Bar Association. In the event the documents are duplicative, those documents shall not be filed.

The Motion at (5) is denied.

The Motion at (4) is granted. The briefing schedule is stayed pending the jurisdiction issue in 97-5129. In the event the

Jcm/

appeal is dismissed for lack of jurisdiction or the jurisdictional question is referred to the merits panel appellant's reply brief shall be filed and served within 10 days from the date of the order stating such. No further extensions shall be granted.

For the Court,
signed P. Douglas Sisk
Clerk

Dated: Apr 16, 1997 LD/cc: MB ADF MRG DMJ RLP SB

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

----------X	Civil Action
IMO ANONYMOUS,	Appeal No. 96-5403& 97-5129
	Petition for Rehearing
Plaintiff-Appellant	In Banc
-against-	Original Panel
	Notice of Motion
CHIEF JUSTICE WILENTZ,	Brief Conforming within Rules
et al.,	Affidavit
Defendants-Appellees	Court Below:
----------X	D.N.J. Civ. No. 96-452 (AET)

PLEASE TAKE NOTICE that plaintiff-appellant shall Petition the Court of Appeals for the Third Circuit for a Rehearing before the Court In Banc and Petition for Rehearing before the original Panel of a May 5, 1997 Order dismissing an appeal in No. 96-5403.

PLEASE TAKE FURTHER NOTICE that in support of this application the undersigned will rely upon the annexed letter-memorandum and pleadings previously filed.

AFFIDAVIT

For the Reasons stated in the annexed letter-memorandum, plaintiff-appellant requests that the Court grant the relief requested for a Rearing and to file the letter-memorandum and appendix as conforming with court rules.

CERTIFICATION

By copy hereof the undersigned certifies that on this day two originals and eighteen (18) copies of this Petition and Motion and letter-memorandum and appendix were mailed to the Court of Appeals for the Third Circuit; and that two copies of the same were mailed to E. Hutton, Hill Wallack, 202 Carnegie Center, Princeton, New Jersey 08543, D. Vacco, NY Dept. of Law, 120 Broadway, 24th Floor, New York, NY 10271; M. Gabrielson, NJ Dept. of Law, CN 112, Trenton, N.J. 08625.

redacted - signed ~~April~~ May 16, 1997

POBox 315, Liberty Corner, NJ 07938, (908) 604-9263

XIV